TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 231.

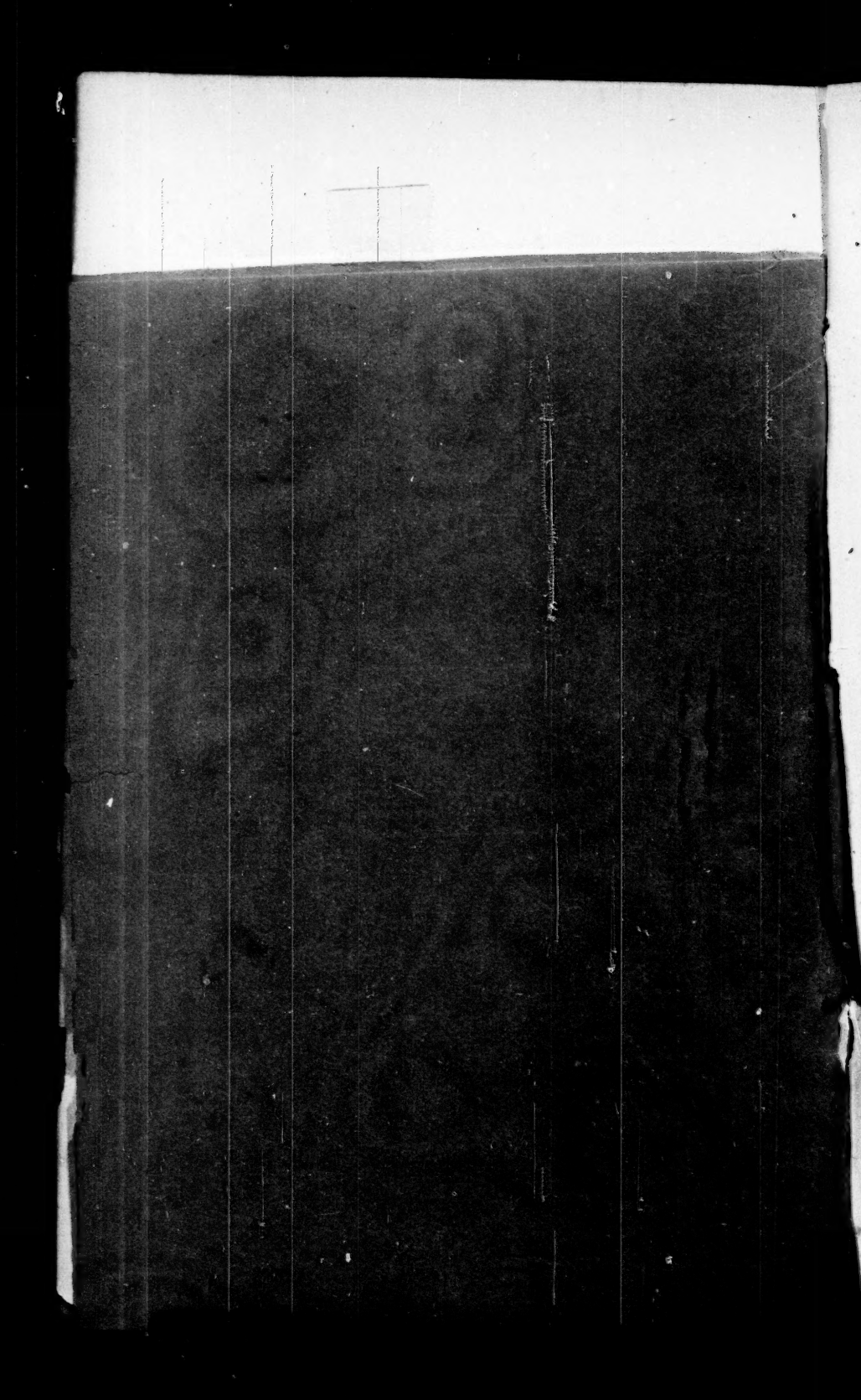
ARTHUR C. DUCAT, PLAINTIFF IN ERROR,

vs.

THE CITY OF CHICAGO.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOS.

FILED MAY 10, 1869.



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1 UNITED STATES OF AMERICA, *State of Illinois, ss:*

Pleas before the honorable the judges of the supreme court of the State of Illinois within and for the third grand division of said State at a regular term of said supreme court begun and holden at the court-house in the city of Ottawa, in La Salle County, and State aforesaid, on the eighth day of September, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the United States the ninety-third.

Present, the Honorable Sidney Breese, chief justice.
" " " Charles B. Lawrence, justice.
" " " Pinkney H. Walker, justice.
Hon. Robert G. Ingersoll, attorney general.
H. A. McCaleb, sheriff of La Salle County.

Attest:

WOODBURY M. TAYLOR, *Clerk.*

2 Be it known that heretofore, to wit, on the eighth day of September, in the year of our Lord one thousand eight hundred and sixty-eight, the same being one of the days of the September term of the supreme court of the State of Illinois for the third grand division thereof, a stipulation was filed in the office of the clerk of said court, which is in the words and figures following, that is to say:

3 In supreme court of Illinois, Sept. term, 1868, 3rd grand division.

ARTHUR C. DUCAT, APPELLANT,
vs.
THE CITY OF CHICAGO, APPELLEE.

And now comes the said appellant, and moves the court that the time for filing the record and abstracts in the above-entitled cause may be extended two weeks from to-day, or until the 23rd inst., for the reason that the law judges of the superior court of Chicago, in which said cause was brought, are not now present in session, so that the judgment and record can be completed.

SCAMMON, McCAGG & FULLER,
Counsel for Appellant.

SEPT. 9TH, 1868.

I consent that the above motion may be granted.

S. A. IRVIN, *for App.*

4 Upon the back of which stipulation appears the following endorsement and filing:

177. Arthur C. Ducat v. the City of Chicago. Præcipe & motion and stipulation.

Filed Sept. 8, 1868.

W. M. TAYLOR, *Clk.*

5 And afterward, to wit, on the 9th day of September, A. D. 1868, the same being one of the days of the September term of this court, the following, among other, proceedings were had and entered of record:

ARTHUR C. DUCAT
vs.
THE CITY OF CHICAGO. } Appeal from superior court of Chicago.

On this day, upon motion of counsel for appellant, appellee agreeing thereto, it is ordered by the court that the time of filing the record in this cause be extended till the twenty-third instant.

6 And afterwards, to wit, on the 22nd day of Sept., 1868, the same being one of the days of the September term of this court, the following, among other, proceedings were had and entered of record:

ARTHTR C. DUCAT
vs.
THE CITY OF CHICAGO. } Appeal from superior court of Chicago.

On this day come again both appellant and appellee, by their respective attorneys, and submit this cause on behalf of both parties; whereupon it is ordered by the court that the appellant have till October 1st, and that appellee have till October 10th, proximo, to file their respective briefs & arguments in this cause.

7 And afterwards, to wit, on the twenty-third day of September, in the year of our Lord one thousand eight hundred and sixty-eight, a record of the superior court of Chicago was filed in the clerk's office of the said supreme court in the words and figures following, that is to say:

8 STATE OF ILLINOIS, *County of Cook, ss:*

Pleas before the honorable the judges of the superior court of Chicago, within and for the county of Cook and State of Illinois, at a regular term of said superior court of Chicago begun and holden at the court-house in the city of Chicago, in said county and State, on the first Monday, being the seventh day of September, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the United States of America the ninety-third.

Present, the Honorable Joseph E. Gary, chief justice of the superior court of Chicago; John A. Jameson and William A. Porter, judges; Charles H. Reed, prosecuting attorney; John L. Beveridge, sheriff of Cook County.

Attest:

AUGUSTUS JACOBSON, *Clerk.*

Be it remembered that heretofore, to wit, on the twenty-fifth day of June, in the year of our Lord one thousand eight hundred and
9 sixty-eight, the City of Chicago, by S. A. Irwin, esq., its attorney, filed in the clerk's office of the superior court of Chicago its certain præcipe for summons, which is in words and figures as follows, to wit:

State of Illinois, Cook County, ss.—Superior court of Chicago, of the term, A. D. 186 .

THE CITY OF CHICAGO, PLAINTIFF,
vs.
ARTHUR C. DUCAT, DEFENDANT. } Action of debt.

The clerk of said court will please issue a summons in the above cause directed to the sheriff of Cook County in a plea of debt, returnable at the July term of said court, A. D. 1868. Debt twenty thousand dollars, damages twenty thousand dollars.

S. A. IRWIN,
Plaintiff's Attorneys.

To AUGUSTUS JACOBSON, Esq., *Clerk.*
CHICAGO, *June 25th*, 1868.

And thereupon there issued out of said clerk's office the people's writ of summons; which said writ cannot be found in my office.

10 And afterwards, on the twenty-fourth day of July, in the year last aforesaid, said plaintiff, by its attorney aforesaid, filed in said clerk's office its certain declaration, which is in words and figures as follows, to wit:

In the superior court of Chicago, of the August term, A. D. 1868.

STATE OF ILLINOIS, *Cook County, ss:*

The City of Chicago, a municipal corporation created by and existing under the laws of the State of Illinois, plaintiff in this suit, by S. A. Irvin, its attorney, complains of Arther C. Ducat, defendant in this suit, who has been summoned, &c., of a plea that said defendant render unto the said plaintiff the sum of twenty thousand dollars, which he owes and unjustly detains from the said plaintiff.

For that whereas heretofore, to wit, on or about the first day of November, A. D. 1865, at the city of Chicago, county of Cook, and
11 State of Illinois, the said defendant did then and there become, and hath since hitherto continued to be, the agent of a certain corporation, company, or association not incorporated under the laws of the State of Illinois, and called the Home Insurance Company, New York, and did then & there and hath ever since continued to engage in the business of effecting fire and marine insurance as the agent of such incorporation, company, or association, and of issuing policies and receiving premiums at the said city of Chicago, for and in behalf of said corporation, company, or association.

And the said plaintiff heretofore, to wit, on the first day of November, A. D. 1865, having a city comptroller and a city treasurer, duly elected or appointed and qualified to act according to the laws of the State of Illinois, and such comptroller and treasurer having ever since existed and continued, the said defendant was bound and it became his duty, in pursuance of the fifth section of the eighth chapter of the act of the general assembly of the State of Illinois, entitled "An
12 act to reduce the charter of the city of Chicago and the several acts amendatory thereof into one act, and to revise the same," approved February 13th, 1863, on or before the fifteenth day of July and January in each year, to render to the city comptroller of said city of Chicago a full, true, and just account, verified by his oath, of all premiums which, during the half-year ending on every first day of July and January preceding such report shall have been received by him, or any other person for him, or shall have been agreed to be paid for or in behalf of said corporation, company, or association; and shall specify in said report or account the amounts received for fire, marine, &c., insurance, respectively.

And it also became and was the duty of the said defendant, as the

agent of said corporation, company, or association, under and by virtue of the provisions of the said section of said chapter and act, at the time of rendering said account, also to pay over to the city treasurer the amount of rates or percentage on premiums for which the
13 said corporation, company, or association was chargeable by virtue of the provisions of the said section of the said chapter of said act.

And the said plaintiff in fact says and avers it to be true that the said defendant, from the time aforesaid that he became agent of the corporation, company, or association aforesaid at said Chicago, in the county of Cook aforesaid, up to the time of the commencement of this suit, did effect both fire and marine insurance to a large amount, and did issue a large number of policies to divers persons for and on behalf of said Home Insurance Company of New York; upon which insurances or policies the said defendant did then & there, to wit, at the city of Chicago, county & State aforesaid, charge and receive as premiums a large amount of money, to wit, the sum of five hundred thousand dollars. Yet the said plaintiff avers that the said defendant has not at any time rendered the account or accounts required by the provisions of the aforesaid section of the chapter and act aforesaid to the city comp-
14 troller; and plaintiff also avers that the said defendant hath not at any time paid over to the city treasurer the sum of two dollars upon the hundred dollars of such premiums or any part thereof. By means whereof, and by the force of the statute, the said plaintiff is entitled to demand and receive from the said defendant two dollars upon the hundred dollars of said premiums, amounting to a large sum of money, to wit, to the sum of ten thousand dollars, being part and parcel of the sum above demanded.

Also for that whereas heretofore, to wit, on the first day of November, A. D. 1865, at the city of Chicago, county of Cook, and State of Illinois, the plaintiff being such corporation as aforesaid, the said defendant did then & there become, and hath since hitherto continued to be, the agent of a certain corporation, company, or association not incorporated under the laws of the State of Illinois, and called the Citizens' Insurance Company of New York, and did then & there and
15 hath ever since continued to engage in the business of effecting fire insurance as the agent of such corporation, company, or association, and of issuing policies and of receiving premiums, at the said city of Chicago, for and in behalf of said corporation, company, or association.

And the said plaintiff heretofore, to wit, on the first day of November, A. D. 1865, having a city comptroller and a city treasurer duly appointed or elected to act according to the laws of the State of Illinois, and such comptroller and treasurer having ever since existed and continued, the said defendant was bound and it became his duty in pursuance of the fifth section of the eighth chapter of the act of the general assembly of the State of Illinois, entitled "An act to reduce the charter of the city of Chicago and the several acts amendatory thereof into one act, and to revise the same," approved February 13th, 1863, on or before the fifteenth day of July & January in each year, to render to the city comptroller of said city of Chicago a full, true, and just account,
16 verified by his oath, of all premiums which, during the half-year ending on every first day of July and January preceding such report shall have been received by him or any other person for him, or shall have been agreed to be paid for or in behalf of said corporation, company, or association, and shall specify in said report or account the

amounts received for fire, marine, & life insurance, respectively; and it also became and was his duty, as the agent of said corporation, company, or association, under and by virtue of the provisions of the said section of said chapter & act at the time of rendering said account also to pay over to the city treasurer the amount of rates or percentage on premiums for which the said corporation, company, or association was chargeable by virtue of the provisions of the said section of said chapter of said act.

And the said plaintiff in fact says and avers it to be true that the said defendant, from the time he became agent of the said Citizens' Insurance Company of New York as aforesaid, at said city of Chicago, in the county of Cook aforesaid, and up to the time of the com-
17 mencement of this suit, did effect fire insurance to a large amount, and did issue a large number of policies to divers persons for and on behalf of said Citizens' Insurance Company of New York; upon which insurances or policies the said defendant did then & there, to wit, at the said city of Chicago, in the county & State aforesaid, charge and receive as premiums a large amount of money, to wit, the sum of five hundred thousand dollars. Yet the said [the said] plaintiff avers that the said defendant has not at any time rendered the account or accounts required by the provisions of the aforesaid section of the act aforesaid to the city comptroller; and plaintiff also avers that the said defendant hath not at any time paid over to the city treasurer the sum of two dollars upon the hundred dollars of such premiums or any part thereof. By means whereof, and by the force of the statute, the said plaintiff is entitled to demand and receive from the said defendant two dollars upon the hundred dollars of said premiums amounting to a large sum of money, to wit, the sum of ten thousand dollars; being
18 part and parcel of the sum above demanded.

Also for that whereas heretofore, to wit, on the 1st day of November, A. D. 1865, at the city of Chicago, county of Cook, & State of Illinois, the plaintiff being such corporation as aforesaid, the said defendant did then & there become and hath since hitherto continued to be the agent of a certain corporation, company, or association not incorporated under the laws of the State of Illinois, and called the Manhattan Insurance Company of New York, and did then & there and hath ever since continued to engage in the business of effecting fire and marine and life insurance as the agent of such corporation, company, or association, and of issuing policies and receiving premiums at the said city of Chicago, for and in behalf of said Manhattan Insurance Company.

And the said plaintiff heretofore, to wit, on the first day of November, A. D. 1865, having a city comptroller and a city treasurer, duly appointed or elected to act according to the laws of the State of Illinois, and such comptroller and treasurer having ever since existed
19 and continued, the said defendant was bound, and it became his duty, in pursuance of the fifth section of the eighth chapter of the act of the general assembly of the State of Illinois, entitled "An act to reduce the charter of the city of Chicago and the several acts amendatory thereof into one act, and to revise the same," approved February 13th, 1863, on or before the fifteenth day of July and January in each year, to render to the city comptroller of said city of Chicago, a full, true, and just account, verified by his oath, of all premiums which during the half-year ending on every first day of July and January preceding such report shall have been received by him, or any other person for him, or shall have been agreed to be paid for or in behalf of said Manhattan Insurance Company, and shall specify in said report

or account the amounts received for fire, marine, & life insurance, respectively.

And it also became and was the duty of said defendant, as the agent of said Manhattan Insurance Company, under and by virtue of
20 the provisions of the said section of the chapter of the act aforesaid, at the time of rendering said account, also to pay over to the city treasurer the amount of rates or percentum on premiums for which said Manhattan Insurance Company was chargeable, by virtue of the provisions of the said section of the said chapter of the aforesaid act.

And the said plaintiff, in fact, says and avers it to be true, that the said defendant from the time he became agent of the Manhattan Insurance Company as aforesaid, at said city of Chicago, in Cook County aforesaid, and up to the commencement of this suit, did effect fire and marine insurance to a large amount, and did issue a large number of policies to divers persons for and on behalf of said last-mentioned company, upon which insurances or policies the said defendant did then & there, to wit, at said city of Chicago, in the county of Cook aforesaid, charge and receive as premiums a large amount of money, to wit, the sum of five hundred thousand dollars. Yet the said plaintiff
21 avers that the said defendant has not at any time rendered the account or accounts required, as last aforesaid, to the city comptroller; and also avers that said defendant hath not any time paid over to the city treasurer the sum of two dollars upon the hundred dollars of such premiums, or any part thereof. By the means whereof, and by the force of the statute, the said plaintiff is entitled to demand and receive from the said defendant two dollars upon the hundred dollars of said premiums, amounting to a large sum of money, to wit, to the sum of ten thousand dollars, being part and parcel of the sum above demanded.

Also for that whereas heretofore, to wit, on the 1st day of November, A. D. 1865, at the city of Chicago, county of Cook, & State of Illinois, the plaintiff being such corporation as aforesaid, the said defendant did then & there become, and hath since hitherto continued to be, the agent of a certain corporation, company, or association not incorporated under the laws of the State of Illinois, and called the Howard Insurance Company of New York, and did then & there and hath ever since
22 continued to engage in the business of fire insurance, as the agent of said last-named company, and of issuing policies and receiving premiums at the said city of Chicago, for and in behalf of said Howard Insurance Company.

And the said plaintiff heretofore, to wit, on the 1st day of November, A. D. 1865, having a city comptroller and a city treasurer, duly appointed or elected to act according to the laws of the State of Illinois, and such comptroller and treasurer having ever since existed and continued, the said defendant was bound, and it became his duty, in pursuance of the fifth section of the eighth chapter of the act of the general assembly of the State of Illinois, entitled "An act to reduce the charter of the city of Chicago and the several acts amendatory thereof into one act, and to revise the same," approved February 13th, 1863, on or before the fifteenth day of July and January in each year, to render to the city comptroller of said city of Chicago, a full, true, and just account, verified by his oath, of all premiums which, during the
23 half-year ending on every first day of July and January preceding such report, shall have been received by him, or any other person for him, or shall have been agreed to be paid for or in behalf of

said Howard Insurance Company, and shall specify in said report or account the amounts received for fire, &c., insurance, respectively.

And it also became and was the duty of said defendant, as the agent of said Howard Insurance Company, under and by virtue of the provisions of the said section of the chapter and act aforesaid, at the time of rendering said account, also to pay over to the city treasurer the amount of rates as percentum on premiums, for which the said Howard Insurance Company was chargeable, by virtue of the provisions of the said section of the chapter & act aforesaid.

And the said plaintiff, in fact, says and avers it to be true, that the said defendant, from the time he became agent of the said Howard Insurance Company at said city of Chicago, county & State aforesaid, and up to the commencement of this suit, did effect fire insur-
24 ance to a large amount, and did issue a large number of policies to divers persons for and on behalf of said last-mentioned company, upon which insurances or policies the said defendant did then & there, to wit, at said city of Chicago, in the county & State aforesaid, charge and receive as premiums a large amount of money, to wit, the sum of five hundred thousand dollars. Yet the said plaintiff avers that the said defendant has not any time rendered the account or accounts required by the said section of the chapter & act aforesaid, to the city comptroller; and also avers that said defendant hath not at any time paid over to the city treasurer the sum of two dollars upon the hundred dollars of such premiums, or any part thereof. By means whereof, and by the force of the statute, the said plaintiff is entitled to demand and receive from the said defendant two dollars upon the hundred dollars of said premiums, amounting to a large sum of money, to wit, the
25 sum of ten thousand dollars, being part and parcel of the sum above demanded.

Also for that whereas heretofore, to wit, on the 1st day of November, A. D. 1865, at the city of Chicago, county of Cook, and State of Illinois, the plaintiff being such corporation as aforesaid, the said defendant did then & there become, and hath since hitherto continued to be, the agent of certain corporations, companies, or associations not incorporated under the laws of this State of Illinois, and known and called as follows, viz: Home Insurance Company of New York, Citizens' Insurance Company of New York, Manhattan Insurance Company of New York, & Howard Insurance Company of New York, and did then & there and hath ever since continued to engage in the business of fire & marine or fire or marine insurance as the agent of the said several companies, and of issuing policies and receiving premiums at the said city of Chicago for and in behalf of said several companies.

And the said plaintiff heretofore, to wit, on the 1st day of November, A. D. 1865, having a city comptroller and a city treasurer duly
26 appointed or elected to act according to the laws of the State of Illinois, and such comptroller and treasurer having ever since existed and continued, the said defendant was bound, and it became his duty, in pursuance of the fifth section of the eighth chapter of the act of the general assembly of the State of Illinois, entitled "An act to reduce the charter of the city of Chicago, and the several acts amendatory thereof into one act, and to revise the same," approved February 13th, 1863, on or before the fifteenth day of July & January in each year, to render to the city comptroller of said city of Chicago a full, true, and just account of all premiums which, during the half-year ending on the first day of July and January preceding such report or account, which shall have been received by him, or any other person for him, or

shall have been agreed to be paid for or in behalf of said companies or any of them, and shall specify in said report or account the amount received for fire, marine, or life insurance, respectively.

And it also became and was the duty of said defendant as the
27 agent of said companies respectively, under and by virtue of the provisions of the said fifth section of the chapter & act last aforesaid, at the time of rendering the aforesaid accounts also to pay over to the city treasurer of said city of Chicago the amount of rates or premiums for which the said companies were severally chargeable by virtue of the provisions of the said section of the aforesaid chapter of the act aforesaid.

And the said plaintiff in fact says and avers it to be true that the said defendant from the time he became agent of the said companies respectively, at said city of Chicago, county and State aforesaid, and up to the commencement of this suit, did effect other fire and marine insurance for the said Home and Manhattan Insurance Companies, and fire insurances for the said Citizens' and Howard Insurance Companies to a large amount respectively, and did issue a large number of other policies to divers persons for and on behalf of said several companies, upon

which insurances on policies the said defendant did then and there,
28 to wit, at the city of Chicago, county and State aforesaid, charge and receive a large amount of money as premiums, to wit, on account of the said Home Insurance Company the sum of five hundred thousand dollars, on account of the said Citizens' Insurance Company the sum of five hundred thousand dollars, on account of the Manhattan Insurance Company the sum of five hundred thousand dollars, and on account of the Howard Insurance Company the sum of five hundred thousand dollars. Yet the said plaintiff avers that the said defendant has not at any time rendered the account required as aforesaid by the section aforesaid of the premiums received by him for said several companies, or any of them, or any part thereof, to the city comptroller as by law required.

And plaintiff also avers that said defendant has not at any time paid over to the city treasurer of said city of Chicago the sum of two dollars upon the hundred dollars of such premiums or any part thereof.

By means whereof and by the force of the statute the said plaint-
29 iff is entitled to demand and receive from the said defendant two dollars upon the hundred dollars of said last premiums, amounting to a large sum of money, to wit, to the sum of forty thousand dollars, being part and parcel of the sum demanded, and which debts the said defendant wrongfully withholds from the plaintiff, to the damage of the said plaintiff twenty thousand dollars; wherefore this suit is brought, &c.

THE CITY OF CHICAGO,
Per S. A. IRVIN, *its Att'y, &c.*

Copy of account sued on.

Arthur C. Ducat to the City of Chicago.

To 2 per ct. on $500,000 rec'd for Home Insurance Co. of N. Y. $10,000
To 2 per ct. on $500,000 rec'd for Citizens' Ins. Co. of N. Y.... $10,000
To 2 per ct. on $500,000 rec'd for Manhattan Ins. Co. of N. Y. $10,000
To 2 per ct. on $500,000 rec'd for Howard Ins. Co. of N. Y... $10,000

30 And afterward, to wit, on the seventh day of September, in the year last aforesaid, there was filed in said clerk's office certain

pleas, demurrer, and joinder; which are in words and figures as follows, to wit:

State of Illinois, Cook County, ss.—In the superior court of Chicago.

ARTHUR C. DUCAT *ads.* THE CITY OF CHICAGO. } In debt.

And now comes the said Arthur C. Ducat, and defends the wrong and injury when, &c., and says that he does not owe the said several sums of money above demanded in the several counts of the declaration, or any part thereof, in manner and form as the said plaintiff hath above thereof complained against him, and of this the said defendant puts himself upon the country, &c.

By his att'ys:

SCAMMON, McCAGG & FULLER.

31 And the plaintiff doth the like.

By its att'y: S. A. IRVIN.

And for a further plea in this behalf the said defendant says actio non, because he says that the said several insurances companies mentioned in the said plaintiff's declaration, and every one of them, are corporations created and established in the State of New York, under and by virtue of the laws of that State, and have their home, offices, and principal places of business in the city of New York, in that State, where they, and each of them, are, by the laws of that State, liable to be taxed, and are taxed under the laws of that State for all municipal, county, and State purposes, upon all property & franchises of the said corporations; and are liable to be taxed, and are thus taxed upon their said property and franchises for all purposes for which taxes are lawfully levied under and by virtue of any laws of the United States; and being so created and established under and by virtue of the
32 laws of the State of New York, for the purpose of carrying on the business of insurance, the said insurance companies, and each one of them, duly appointed the defendant their agent, to carry on the business of insurance on their behalf in the city of Chicago, in the State of Illinois, on, to wit, the ninth day of November, A. D., 1865, which appointment the defendant accepted, and thereupon applied to the auditor of the State of Illinois for licenses to carry on said business of insurance at said city of Chicago, as required by two acts of the general assembly of the State of Illinois, one approved Feb. 14, 1855, and the other amendatory of that act, approved Jan'y 22, 1857; the first act being entitled "An act to regulate the agencies of insurance companies not incorporated by the State of Illinois," which licenses were on the same day granted to this defendant by said auditor for one year from that date, and said licenses were renewed and extended to this defendant by said auditor from time to time; and on the 23rd day of January, 1868, were again extended until the 31st day of January, 1869; which last
33 several licenses are still in force, and are in substance as follows:

Original.

Certificate to expire on the 31st day of January, 1859.

[5-cts.-[5] internal revenue.]

AUDITOR'S OFFICE, STATE OF ILLINOIS,
Springfield, 31*st Jan'y*, 1868.

Whereas the Manhattan Insurance Company, ["Citizens' Fire," "Home,"

and "Howard Fire,"] located at New York, in the State of New York, has filed in this office a statement of the condition of its affairs, as required by "An act to regulate the agencies of insurance companies not incorporated by the State of Illinois," approved February 14, 1855, and an act amendatory thereto, approved January 22d, 1857; and whereas said company has furnished satisfactory evidence that it is possessed of the required amount of capital invested in stocks and mortgages, and has filed in this office a written instrument, signed by the president and secretary thereof, appointing Arthur C. Ducat, of Chicago, its agent for the transaction of the business of said company, and fully and unreservedly authorizing him to acknowledge service of process for and
34 on behalf of said company, consenting that service of process upon him, the said agent, shall be taken and held to be as valid as if served upon the company, and waiving all claim of error by reason of such service.

Now, therefore, in pursuance of the provisions of the acts aforesaid, I, Olin H. Miner, auditor of public accounts of the State of Illinois, do hereby certify that the said Arthur C. Ducat, of Chicago, is authorized as an agent for the said company, to transact the business of insurance in this State until the thirty-first day of January, in the year eighteen hundred and sixty-nine, so far as he may be legally empowered so to do by said company.

In testimony whereof I have hereunto subscribed my name and affixed the seal of my office, at Springfield, this 31st day of Jan'y, A. D. 1868.

[AUDITOR'S SEAL.] (S'd) O. H. MINER,
Auditor P. A.

And so in substance were the first and all former licences, and for
35 which licences this defendant paid all the fees required by said acts of the legislature of the State of Illinois, and under and by virtue of the same, and of the powers conferred upon him by said insurance companies as their agent, and also by virtue of the powers by law conferred upon said insurance companies by their respective charters granted by the laws of the State of New York, he carried on the business of insurance on behalf of said companies, at the city of Chicago, for the time stated in the plaintiff's declaration, as he lawfully might; and this defendant further states that, during all the time he has so conducted the business of insurance for said companies, that all the real and personal property of the said several insurance companies within the State of Illinois has been liable to be taxed, and has been taxed as that of the citizens of the State of Illinois and of incorporated companies created and established under and by virtue of the laws of that State, for State, county, and municipal purposes.

And this defendant further says that, under and by virtue of
36 the laws of that State, no other person or corporation, foreign or domestic, is required to pay, or does pay, any tax, license, or assessment like that laid upon foreign insurance companies, by virtue of the several acts of the legislature of Illinois referred to in the plaintiff's declaration, and by virtue of which acts the plaintiff demands of this defendant the several sums claimed to be due from him to the plaintiff, and so this defendant says that the several acts of the legislature of Illinois, under and by force of which the plaintiff demands of him the several sums of moneys stated in its declaration in this cause, are unconstitutional, null, and void as against the several provisions of the constitution of the State of Illinois, requiring taxation to be uniform

respecting persons and property liable to taxation within that State, and also because said acts contravene that section of the Constitution of the United States which provides "that the citizens of each State shall be entitled to all the privileges and immunities of citizens of the several States," and because said laws are otherwise unconstitutional
37 and void under the constitution of this State and of the United States; and this he is ready to verify. Wherefore he prays judgment, &c.

By his att'ys:

SCAMMON, McCAGG & FULLER.

Demurrer.

And now comes the said plaintiff, by S. A. Irvin, his attorney, and says that the said plea by the defendant secondly above pleaded, in manner and form as pleaded, and the matters therein contained and set forth, are not sufficient in law to bar the plaintiff of its aforesaid action against him, and that it is not bound by law to answer the same; and this it is ready to verify. Wherefore it prays judgment, &c., as aforesaid, &c.

By S. A. IRVIN,
Plaintiff's Attorney.

Joinder.

And the defendant says that the said second plea is sufficient in law.

By SCAMMON, McCAGG & FULLER,
Defendant's Attorneys.

38 And afterward, to wit, on the twenty-first day of September in the year last aforesaid, said parties, by their attorneys, respectively, as aforesaid, filed in said clerk's office their certain stipulation, which is in words and figures as follows, to wit:

In superior court of Chicago, Sept. T., 1868.

THE CITY OF CHICAGO } In debt.
vs.
ARTHUR C. DUCAT. }

Stipulation.

It is hereby agreed that this case shall be submitted to the court for trial upon the pleadings without a jury, and in case the court shall find the issues for the plaintiff, that judgment shall be rendered in its favour for three thousand seven hundred and fifty-six dollars and thirty-nine cents, such judgment to be entered as of the first day of the
39 present Sept. term of that court, and that an appeal shall be prayed and allowed as of that day, and the appeal bond and the pleas and all papers in the cause filed since the declaration to be filed as of that date and record made out as soon as the clerk can do it, to be filed in the supreme court as of the time permitted by the rule now entered in that court as in that case, and the cause submitted to that court for hearing and decision at the present term upon briefs to be filed.

S. A. IRVIN, *Att'y for City.*
S , McCAGG & FULLER,
For Defendant.

And afterwards, to wit, on the day and year last aforesaid, the same being one of the days of the September term of said court, the following among other proceedings were had in said court and entered of record nunc pro tunc as of the seventh day of September, A. D. 1868, to wit:

40 4280—21880.

THE CITY OF CHICAGO *vs.* ARTHUR C. DUCAT. } Debt.

This day comes the plaintiff to this suit by H. Davis, city attorney, and the defendant, by Scammon, McCagg and Culver, his attorneys, also comes, and this cause coming on now to be heard upon the demurrer of the plaintiff filed herein to the special plea of the defendant filed in said cause, after argument of counsel and due deliberation by the court, said demurrer is sustained; and thereupon, on the agreement of the parties now here, made in open court, this cause is submitted to the court for trial upon the issues joined herein without the intervention of a jury. And the court now here, after hearing the evidence adduced herein by the parties, and the argument of counsel, and being fully advised in the premises, finds there is due and owing the plaintiff from the defendant for its debt the sum of thirty-seven hundred and fifty-six dollars and thirty-nine cents.

41 Therefore it is considered by the court that the plaintiff do have and recover of and from the defendant its said debt of thirty-
$3,756 39 as aforesaid found due, together with its costs and charges in this seven hundred and fifty-six dollars and thirty-nine cents, in form behalf expended, and have execution therefor.

And the defendant, having entered his exceptions herein, prays an appeal to the supreme court of this State from the judgment of the court, which is allowed to him on filing his appeal bond herein in the penalty of six thousand dollars, with security to be approved by one of the judges of this court and to be filed on or before the twenty-sixth instant. And on the agreement of the parties now here, made in open court, it is further ordered by the court that this order be entered nunc pro tunc as of the seventh instant.

And afterwards, to wit, on the twenty-third day of September, in the year last aforesaid, said defendant, by his attorneys, aforesaid, filed
42 in said clerk's office, his certain appeal bond, which is in words and figures as follows, to wit:

Know all men by these presents that we, Arthur C. Ducat as principal, and George F. Bissell as surety, of the county of Cook, and State of Illinois, are held and firmly bound unto the City of Chicago, also of the same county and State, in the penal sum of six thousand dollars, lawful money of the United States; for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly, severally, and firmly, by these presents.

Witness our hands and seals this twenty-first day of September, A. D. 1868.

The condition of the above obligation is such, that whereas the said "The city of Chicago," did, on the seventh day of September, A. D. 1868, in the superior court of Chicago, in and for the county of Cook and State aforesaid, and of the September term thereof, A. D. 1868,

43 recover a judgment against the above-bounden Arthur C. Ducat for the sum of three thousand seven hundred and fifty-six dollars and thirty-nine cents, besides costs of suit, from which said judgment of the said superior court of Chicago the said Arthur C. Ducat has prayed for and obtained an appeal to the supreme court of said State:

Now, therefore, if the said Arthur C. Ducat shall duly prosecute his said appeal with effect, and moreover pay the amount of the judgment, costs, interest, and damages rendered and to be rendered against him in case the said judgment shall be affirmed in said supreme court then the above obligation to be void; otherwise to remain in full force and virtue.

ARTHUR C. DUCAT. [SEAL]
GEORGE F. BISSELL. [SEAL]

Approved:

W. KIMBALL, *City Comptroller.*

Approved:

JOSEPH E. GARY,
Judge of Superior Court of Chicago.

44 STATE OF ILLINOIS, *County of Cook, ss:*

I, Augustus Jacobson, clerk of the superior court of Chicago, within and for the county and State aforesaid, do hereby certify the above and foregoing to be a full, true, and complete transcript of all the papers and pleadings on file in my office, and all orders and judgment made and entered of record in said court, together with the appeal bond in a certain cause lately pending in said court on the law side thereof, wherein the City of Chicago was plaintiff, and Arthur C. Ducat, defendant.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Chicago, this 23rd day of September, A. D. 1868.

[SEAL.] A. JACOBSON, *Clerk.*

[5 cts. internal revenue.]

45 State of Illinois, third grand division, ss.—In supreme court, of the September term, A. D. 1868.

ARTHUR C. DUCAT, APPELLANT,
vs.
THE CITY OF CHICAGO, APPELLEE.

Assignment of errors.

And now comes Arthur C. Ducat, the appellant, by Scammon, McCagg & Fuller, his attorneys, and says that in the record and proceedings aforesaid there is manifest error in this, to wit:

1st. The superior court of Chicago erred in sustaining the demurrer of the plaintiff below to the special plea of the defendant below.

2d. The court erred in giving judgment for the plaintiff below.

3rd. The court erred in not giving judgment for the defendant below.

46 By reason whereof the said appellant prays that said judgment may be reversed, etc.

SCAMMON, McCAGG & FULLER,
Counsel for Appellant.

Joinder in error.

S. A. IRVIN, *for City.*

Upon the back of which record, assignment of errors, and joinder is written the following endorsement and filing, to wit:

177. Ducat vs. the City of Chicago. Record.

Filed Sep. 23, 1868.

W. M. TAYLOR, *Clk.*

47 And afterwards, to wit, on the thirteenth day of February, in the year of our Lord one thousand eight hundred and sixty-nine, the following opinion of the supreme court of the State of Illinois for the third grand division thereof was filed in the office of the clerk thereof, at Ottawa, in the county of La Salle, and State of Illinois, in the words and figures following, that is to say:

48 A. C. DUCAT
vs.
CITY OF CHICAGO.

Opinion of Breese, chief justice.

This was an action of debt brought in the superior court of Chicago by the City of Chicago, against Arthur C. Ducat, to recover of him, as agent of four several insurance companies created and established in the State of New York, by virtue of the laws of that State, the sum of two dollars upon every hundred dollars of premiums, he, as such agent, had received on policies issued by said companies severally, whilst they were doing business as such companies in the city of Chicago.

Besides the plea of nil debit, on which an issue was made up, the defendants filed a special plea, to which a demurrer was sustained, and by consent the cause was tried by the court on the general issue.

The court found for the plaintiff thirty-seven hundred and fifty-
49 six $\frac{39}{100}$ dollars as the debt due, for which judgment was rendered, together with costs.

To reverse this judgment the defendant prosecutes this appeal, assigning as error, sustaining the demurrer to the special plea.

The claim of the city to recover of the defendant is founded upon the fifth section of the revised charter of the city of Chicago, (Pr. Laws 1863, pp. 98, 99,) the provisions of which are sufficiently set forth in the declaration.

The special plea, which was demurred out, presented the question of the power of the legislature to make a discrimination between foreign and domestic insurance companies by taxing them on the premiums received, and letting the domestic corporations go untaxed on the same, the former having complied with the laws of the State permitting them to exercise their faculties in this State.

Appellant takes the ground that after this State has authorized insurance companies to establish agencies and do business here, it
50 cannot tax their property more or differently than the property of citizens of the State is taxed.

This is an important and very interesting question, and we have very carefully considered the points made by appellant and the arguments in their support, and have reached the conclusion that corporations are not citizens within the meaning of section 2 of article four of the Constitution of the United States.

Appellant's proposition is that corporations created by the laws of

New York are, to the intents and purposes for which they are created, citizens of New York, and as such entitled to all the benefits of the section above cited, that "the citizens of each State should be entitled to all privileges and immunities of citizens of the several States."

We have examined all the authorities cited on both sides of this proposition, and cannot find it has ever been decided by any court that corporations are citizens, within the sense and meaning of this clause.

51 The cases of the Louisville, C. and C. R. R. Co. vs. Letson, (2 Howard, 497,) and Covington Drawbridge Co. vs. Shephard, (20 ib., 227,) do not establish the proposition in plaintiff's favor. In both cases the question was one of jurisdiction, and no reference was made in either case to this clause of the Constitution, and therefore are not decisive of the point. In the last-named case Chief Justice Taney, in delivering the opinion of the court, said, that in the case of the La Fayette Insurance Company vs. French et al., (18 ib., 404,) the declaration stated that the corporation itself was a citizen of Indiana. "Now, no one, we presume, ever supposed that the artificial being created by an act of incorporation could be a citizen of a State, in the sense in which that word is used in the Constitution of the United States, and the averment was rejected, because the matter averred was simply impossible."

By referring to the case in 18th Howard, 404, it appears the opinion of the majority of the court was delivered by Mr. Justice Curtis,

52 and in it he says: "The averment that the company is a citizen of Indiana can have no sensible meaning attached to it. This court does not hold that either a voluntary association of persons or an association into a body politic created by law is a citizen of a State within the meaning of the Constitution."

The case in 2 Howard decides nothing more than that for all the purposes of suing and being sued, a corporation created by and doing business in a particular State is substantially a citizen of the State which created it, within the meaning of the Constitution and law of Congress conferring jurisdiction on the courts of the United States in cases between citizens of different States. Having this right conceded to it, a corporation may properly be considered a citizen of the State of its creation for the purpose of bringing suit, but we are inclined to think the concession was an unfortunate one. The first case in which the question came up was the case of Hope Insurance Co. vs. Boardman, (5 Crouch, 57.) It was argued for the plaintiff in error,

53 the insurance company, by Mr. Ingersoll, who made the point that a corporation aggregate could not be a citizen of any State, and there was no averment of citizenship in the declaration of the individuals who composed the corporation, referring to Bingham vs. Cabot, (3 Dallas, 382,) which case holds it was necessary to set forth the citizenship or alienage, where a foreigner was concerned, of the respective parties, in order to bring the case within the jurisdiction of the court, and that the record in that respect was defective.

Mr. Adams, afterward President of the United States, argued for the defendant in error, and said, speaking of the declaration in the case, that the defendant was described as "a company legally incorporated by the legislature of the State of Rhode Island and Providence Plantations, and established at Providence, in the said district." He said the term "citizen" could not, with propriety, be applied to a corporation aggregate. It could only be a citizen by intendant of law. It is only a moral person; but it may be a citizen quoad hoc, that is, in the sense

54 in which the term citizen is used in that part of the Constitution which speaks of the jurisdiction of the judicial power of the

United States. The term is indeterminate in its signification. It has different meanings in different parts of the Constitution. When it says, "the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States," the term citizens has a meaning different from that in which it is used in describing the jurisdiction of the courts.

There was pending in that court, and argued at the same term, the case of the Bank of the United States vs. Deveaux et al. It was argued by the most distinguished lawyers of that day, and the opinion, in the last case, was, that no right was conferred upon the bank by the act of incorporation to sue in the federal courts, but following a decision in 12 Modern Reports, a book of questionable authority, and finding that the English judges had declared that they could look beyond the corporate name, and notice the character of the individual corporations, it
55 was decided that a corporation aggregate, composed of citizens of one State, might sue a citizen of another State in the circuit court of the United States. In the course of the opinion Chief Justice Marshal said: "That invisible, intangible, and artificial being, that mere legal entity, a corporation aggregate, is certainly not a citizen, and consequently cannot sue or be sued in the courts of the United States, unless the rights of the members, in this respect, can be exercised in their corporate name;" and in casting about for authority to sustain such a proposition, the distinguished Chief Justice quoted and relied upon 12 Madison.

The case in 2 Howard, supra, has modified this opinion in 5 Crouch, adopting the argument of Mr. Adams in the Hope Ins, Co. case, ibid, that a corporation was quoad hoc a citizen for the purpose of suing and being sued.

It seems to us there is much more sound sense and a more just appreciation of this subject to be found in the views expressed by Chief
56 Justice Taney in the case of the Bank of Augusta vs. Earle, (13 Peters, 519,) cited with so much deserved approbation by appellant's counsel, in which he places the power of a corporation, created in one State, to make contracts in another State, upon the comity between the States, and says that the comity thus extended is no impeachment of sovereignty, it being the voluntary act of the State by which it is affirmed, but inadmissible when contrary to its policy or prejudicial to its interests.

This power, then, existing by comity only, and such comity inadmissible, when it is contrary to the policy of a State to admit it, the pretence that in this respect the corporation is vested with all the rights of a citizen of another State, vanishes. The same comity which recognizes their contracts, should recognise this power to enforce them by suit, otherwise the power to contract would be in a great degree nugatory.

Appellant's counsel refers to Campbell vs. Morris, (3 Harris & McHenry, 554,) but it decides nothing pertinent to the case now
57 before us. In construing the second section of the fourth article, the court endeavours to affix a meaning to the words "immunities" and "privileges," and concluding, they do not mean the right to hold offices or to possess the elective franchise, the court thought they meant that the citizens of all the States should have the peculiar advantage of acquiring and holding real as well as personal property, and that such property should be protected and secured by the laws of the State in the same manner as the property of the citizens of the State is protected; that it meant that such property should not be liable to any taxes or burdens which the property of the citizen is not subject to.

We accept this construction, and fully accord with the reasoning and conclusion in Wiley vs. Parmer, (14 Alabama, 627;) and the principle sanctioned in Oliver vs. Washington Mills, (11 Allen, 268,) has been often declared by this court. A non-resident owner cannot be taxed higher than a resident, nor are they under the law we are considering. The individuals composing the corporation may be citizens, but the ownership of their corporate property is not in the individual mem-
58 bers, but in the corporation. As was said by Taney, Ch. Justice, in the case in 13 Peters, supra, if the members of a corporation are to be regarded as individuals carrying on business in their corporate name, and therefore entitled to the privileges of citizens in matters of contract, it is very clear they must, at the same time, take upon themselves the liabilities of citizens, and be bound by their contracts in like manner.

The result of this would be, as he very justly says, to make a corporation a mere partnership in business, in which each stockholder would be liable to the whole extent of his property for the debts of the corporation; and he might be sued for them in any State in which he might happen to be found. The clause of the Constitution referred to, he says, certainly never intended to give to the citizens of each State the privileges of citizens in the several States, and, at the same time, to exempt them from the liabilities which the exercise of such privileges would bring upon individuals who were citizens of the State.
59 This would be to give the citizens of other States far higher and greater privileges than are enjoyed by the citizens of the State itself. Besides it would deprive every State of all control over the extent of corporate franchises proper to be granted in the State, and corporations would be chartered in one to carry on their operations in another.

He further says, whenever a corporation makes a contract, it is the contract of the legal entity; of the artificial being created by the charter, and not the contract of the individual members. The only rights it can claim are the rights which are given to it in that character, and not the rights which belong to its members as citizens of a State.

These passages from that opinion settle us in our convictions that corporations have no status in States as citizens of the State creating them, and when they come into this State to do business and make profits, a discrimination can be rightfully made between them and our domestic corporations of the same character; that if it should be
60 deemed good policy by the legislature, they could be so taxed, or otherwise burdened, as to compel them to leave the State. They may be regarded as a benefit or a nuisance, according to the caprice of the legislature, they not being citizens in any approved sense of that term, which can be correctly understood in no other sense than that in which it was understood in common acceptation when the Constitution was adopted, and as it is universally explained by writers on government without an exception. A citizen is of the genus homo, inhabiting and having certain rights in some State or district. Such a being, if a citizen of New York, or of any other State of this Union, is, for many purposes, a citizen of this State and of all the other States, and is entitled to all such privileges and immunities, within the purview of the Constitution, as the citizens of those States permanently residing therein are entitled to. These are personal privileges, many of which are specified in the case of Corfield vs. Coryell, (4 Wash. C. C. R., 371,) cited approvingly by appellant.

61 These privileges attach to him in every State into which he may enter, as to a human being, as a person with faculties to appreciate them, and enjoy them, not to an intangibility, a mere legal entity, an invisible artificial being, but to the man made in God's own image.

The individual citizen has the power of moving from place to place as his business or his pleasure may prompt. He has rights which are so important as to make it desirable that they should be uniform throughout this broad and expanded Union, which, in order to promote mutual friendship and free social or business intercourse among the people of the several States, were placed, by this clause of article 4, under the protection of the federal government. In the case of corporations, no such reasons exist.

Corporations in the States of their creation are not entitled to the privileges or "rights," as appellant claims, of the citizens of such States. They cannot vote at elections; they are ineligible to any public office; they cannot be executors, administrators, or guardians. They
62 are artificial beings, endowed only with such powers and privileges and rights as their creator thought proper to bestow upon them. They have not the power of locomotion, and, of course, are not fit subjects, in the views above expressed, of the constitutional clause on which this cause turns. Not being able to go into the States of the Union at their corporate will and pleasure, and exercise their faculties therein, they cannot, by any reasonable and just view of that clause, be deemed as coming within its spirit or object.

This tax of two dollars imposed on these companies is not a tax on the persons or property of the corporators or stockholders. It is the artificial being, the mere legal entity, which is taxed, and the tax is paid out of the funds of the corporation. The immunity claimed by appellants is claimed on behalf of the corporation as such, and not in behalf of the individual stockholders, and cannot be allowed.

As was said by the supreme court of New Jersey, in Tatem vs. Wright et al., (3 Zabriskie 429:) The business transacted by the appellant,
63 is the business of the several corporations whom he represents, and although the several stockholders are interested in that business, and their profits may be affected by the taxes imposed, yet, as they choose to transact it through the medium of an incorporated name, having no personal character or rights, and not properly within the designation of a citizen, they must take their charters with all the disabilities properly belonging to it, one of which is, if an incorporation goes beyond the limits of the sovereignty which created it, it must submit to such terms as such other sovereignties see fit to impose.

The views we have here expressed, render it unnecessary to consider the authorities cited by appellees. We have looked into some of them, and they fortify the positions the city has taken.

The point made, that this is a tax, and not uniform, and therefore unconstitutional, is fully answered by the case of the People vs. Thueber, (13 Ill., 554,) and the Fireman's Benevolent Association vs.
64 Lounsbury, (21 ib., 511.)

There being no error in the record, the judgment is affirmed.

65 And on the same day, to wit, on the 13th day of February, A. D. 1869, the following final order of the supreme court of the State of Illinois for the third grand divsion thereof was made and entered of record herein; which is in the words and figures following, that is to say:

Vacation after September term, A. D. 1868, February 13th, A. D. 1869.

ARTHUR C. DUCAT
vs.
THE CITY OF CHICAGO. } No. 177.—Appeal from superior court of Chicago.

On this day came again the said parties, and the court having diligently examined and inspected as well the record and proceedings aforesaid as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, for that it appears to the court now here that neither in the record and proceedings
66 aforesaid, nor in the rendition of the judgment aforesaid, is there anything erroneous, vicious, or defective, and that the record is no error; therefore, it is considered by the court, that the judgment aforesaid be affirmed in all things, and stand in full force and effect, notwithstanding the said matters and things therein assigned for error. And it is further considered by the court that the said appellee recover of and from the said appellant its costs by it in this behalf expended, and that it have execution therefor.

67 And afterwards, to wit, on the first day of April, in the year of our Lord one thousand eight hundred and sixty-nine, a certificate and order of the supreme court of the State of Illinois for the third grand division thereof was filed in the clerk's office of the said court, at Ottowa, in the county of La Salle and State of Illinois, in the words and figures following, that is to say:

68 In the supreme court of the State of Illinois, 3d grand division, in vacation after Sept. T., 1869.

ARTHUR C. DUCAT, P'FF IN ERROR,
v.
THE CITY OF CHICAGO, DEF'T IN ERROR. } Certificate.

And now, upon the entry of final judgment in this cause against the p'ff in error and reading and filing the opinion of the court, it is on motion of Messrs. Scammon, McCagg & Fuller, counsel for the p'ff in error, ordered, that it be certified and entered on the record of the proceedings in said cause that in the above-entitled case there was drawn in question the validity of the statute of the State of Illinois passed and approved on the 13th day of February, 1863, entitled "An act to reduce the char-
69 ter of the city of Chicago and the several acts amendatory thereof into one act, and to revise the same," on the ground that the fifth and sixth sections of chapter eight of said act were repugnant to the provisions of the second section of Article IV of the Constitution of the United States, and that the decision of the court was in favor of the validity of the said sections of said statute.

SIDNEY BREESE,
Chief Justice of the Supreme Court of the State of Illinois.

Upon the back of which certificate appears the following endorsement and filing:

Ducat v. the City of Chicago. Certificate.
Filed April 1st, 1869.

W. M. TAYLOR, *Clk.*

70 And afterwards, to wit, on the first day of April, in the year of

our Lord one thousand eight hundred and sixty-eight, a bond was filed in the office of the clerk of the supreme court of the State of Illinois for the third grand division thereof, at Ottawa, in the county of La Salle and State of Illinois, which was in the words and figures following, that is to say:

71 Supreme Court of the United States.

ARTHUR C. DUCAT
vs.
THE CITY OF CHICAGO. } In error.

Know all men by these presents that we, Arthur C. Ducat as principal, and G. F. Bissell as surety, are held and firmly bound unto the above-named City of Chicago in the sum of six thousand dollars, to be paid to the said City of Chicago; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals and dated this twenty-third day of February, in the year of our Lord one thousand eight hundred and sixty-nine.

Whereas the above-named Arthur C. Ducat hath prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above-entitled suit by the Supreme Court of the State of Illinois:

72 Now, therefore, the condition of this obligation is such, that if the above-named Arthur C. Ducat shall prosecute his said writ of error to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

ARTHUR C. DUCAT. [SEAL.]
G. F. BISSELL. [SEAL.]

Sealed and delivered in the presence of—
O. P. DICKINSON.
DAN'L MORSE.

STATE OF ILLINOIS, *ss:*

I approve this bond and security. Done at chambers, in Clinton County, Illinois, this 5th day of March, 1869.

SIDNEY BREESE,
Chief Justice Supreme Court State of Ill.

Approved:

WALTER KIMBALL,
City Comptroller.

CHICAGO, *M'ch* 25, 1869.

73 Upon the back of which appeal bond appears the following endorsement and filing:

Supreme Court of the U. S. Arthur C. Ducat vs. the City of Chicago. Appeal bond.
Filed April 1st, 1869.

W. M. TAYLOR, *Clk.*

Appeal bond approved:

_____, *Chief Justice.*

The following oath of responsibility was annexed to the above-written appeal bond, to wit:

STATE OF ILLINOIS, *County of Cook, ss.*

74 George F. Bissell, of the city of Chicago, in the county of Cook and State of Illinois, being duly sworn according to law, deposes and says that he is worth the sum of six thousand dollars free and clear and over and above all debts and liabilities of whatever character, and that he is the owner of real estate in the said county of Cook worth at least the sum of twenty thousand dollars over and above all liens and encumbrances thereon.

GEORGE F. BISSELL.

Sworn to and subscribed before me this twenty-fifth day of March, A.D. 1869.

[SEAL.] W. IRVING CULVER,
Notary Public.

[5 cts. [5] internal revenue.]

75 And on the same day, to wit, on the first day of April, in the year of our Lord one thousand eight hundred & sixty-nine, the following citation was filed in the office of the clerk of the said supreme court of the State of Illinois, to wit:

76 UNITED STATES OF AMERICA, *ss:*

To the City of Chicago, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday in December next, (December, A. D. 1869,) pursuant to a writ of error filed in the office of the clerk of the supreme court of the State of Illinois, for the third grand division thereof, wherein Arthur C. Ducat is plaintiff in error, and the said City of Chicago is defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness Sidney Breese, chief justice of the supreme court of the State of Illinois, this fifth day of March, in the year of our Lord one thousand eight hundred and sixty-nine.

SIDNEY BBEESE.

77 I hereby accept service of the foregoing citation by the delivery of a copy thereof to me this 27th day of March, A .D. 1869.

S. A. IRVIN,
Counsel to Corporation City of Chicago.

Upon the back of which citation appears the following endorsement:

Supreme Court of the U. S. Arthur C. Ducat v. the City of Chicago. Citation.

Filed April 1st, 1869.

W. M. TAYLOR, *Clk.*

Scammon, McCagg & Fuller, atty's for pl'ff in error.

78 And on the same day, to wit, on the first day of April, in the

year of our Lord one thousand eight hundred and sixty-nine, there was filed in the office of the clerk of the supreme court of the State of Illinois for the third grand division thereof, at Ottawa, in the county of La Salle and State of Illinois, a writ of error, which is in the words and figures following, that is to say:

79 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the supreme court of the State of Illinois for the third grand division thereof, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said supreme court of the State of Illinois for the third grand division thereof, before you, between Arthur C. Ducat and the City of Chicago, a manifest error hath happened, to the great damage of the said Arthur C. Ducat, as by his complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the
80 same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this twenty-fifth day of March, in the year of our Lord one thousand eight hundred and sixty-nine, and of the independence of the United States the ninety-third.

[SEAL.] W. H. BRADLEY, *Clk.*

Upon the back of which writ of error appears the following endorsement and filing, to wit:

81 Supreme Court of the United States. 177. Arthur C. Ducat vs. the City of Chicago. Writ of error.

Copy of a writ of error lodged in pursuance of the statute of the United States in such case made and provided for the above-named City of Chicago, defendant in error.

SAM. W. FULLER,
Att'y for P'ff in Error.

Filed this 1st day of April, 1869.

W. M. TAYLOR, *Clk.*

Scammon, McCagg & Fuller, att'ys for pl'ff in error.

82 STATE OF ILLINOIS, *ss:*

I, Woodbury M. Taylor, clerk of the supreme court of the State of Illinois for the third grand division thereof, do hereby certify the above and foregoing to be a full and complete transcript of all the papers and pleadings on file in my office (except the abstracts of the

record of the court below and the briefs and arguments of counsel) as well as of all orders or judgments entered of record in said supreme court in a cause lately pending in said court wherein Arthur C. Ducat was appellant and the City of Chicago was appellee.

In testimony whereof I have hereunto set my hand and affixed the seal of the said supreme court, at Ottawa, this third day of April, in the year of our Lord one thousand eight hundred and sixty-nine.

[SEAL.] W. M. TAYLOR,
Clerk of the Supreme Court.

83 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the supreme court of the State of Illinois for the third grand division thereof, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said supreme court of the State of Illinois, for the third grand division thereof, before you, between Arthur C. Ducat and the City of Chicago, a manifest error hath happened, to the great damage of the said Arthur C. Ducat, as by his complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this twenty-fifth day of March, in the year
84 of our Lord one thousand eight hundred and sixty-nine, and of the independence of the United States the ninety-third year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

(Indorsed:) Supreme Court of the United States. No. 466. Arthur C. Ducat vs. the City of Chicago. Writ of error.
Filed April 1st, 1869.

W. M. TAYLOR, *Clk.*

Filed 10 May, 1869.
Scammon, McCagg & Fuller, att'ys for pl'ff in error.

85 UNITED STATES OF AMERICA, *ss:*

To the City of Chicago, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday in December next, (December, A. D. 1869,) pursuant to a writ of error filed in the office of the clerk of the supreme court of the State of Illinois, for the third grand division thereof, wherein Arthur C. Ducat is plaintiff in error, and the said City of Chicago is defendant in error, to show cause, if any there be, why the judgment in the said writ

of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness, Sidney Breese, chief justice of the supreme court of the State of Illinois, this fifth day of March, in the year of our Lord one thousand eight hundred and sixty-nine.

SIDNEY BREESE.

I hereby accept service of the foregoing citation, by the delivery of a copy thereof to me, this 27th day of March, A. D. 1869.

S. A. IRVIN,
Counsel to Corporation City of Chicago.

86 (Indorsed :) Supreme Court of the U. S. No. 466. Arthur C. Ducat v. the City of Chicago. Citation.
Filed 10 May, 1869.
Scammon, McCagg & Fuller, att'ys for pl'ff in error.

(Indorsement on cover :) Arthur C. Ducat v. the City of Chicago. Record of supreme court of Illinois. Fee, $30 00.
No. 231. Arthur C. Ducat, plaintiff in error, vs. the City of Chicago. Illinois supreme court.
Filed 10th May, 1869.

Supreme Court of the United States,

December Term, A. D. 1869.

ARTHUR C. DUCAT,
Pl'ff in Error,
vs.
THE CITY OF CHICAGO,
Def't in Error.
No. 231.

BRIEF FOR PLAINTIFF IN ERROR.

SAM'L W. FULLER, *Counsel for Plaintff in Error.*

Beach & Barnard, Steam Printers, 126 South Clark Street.

Supreme Court of the United States,

December Term, A. D. 1869.

ARTHUR C. DUCAT,
Pl'ff in Error,
vs.
THE CITY OF CHICAGO,
Def't in Error.
No. 231.

BRIEF FOR PLAINTIFF IN ERROR.

This case was brought here for the purpose of presenting to the Court the same questions which were raised and decided in the case of *Paul* v. *The State of Virginia*, 8 Wallace, 168. The parties and counsel in this case did not know of the pendency of that, until after it was argued and submitted to the Court, at the December Term, 1868, although this case was then on the docket of the Court; and it is not proposed to argue again the questions which were decided in *Paul's* case, but to ask the Court to examine the record, and see whether or not the facts appearing in this case take it out of the scope and effect of the decision in that.

It was decided in *Paul's* case that corporations are not "citizens" within the meaning of that clause of the Constitution of the United States, which declares that "the "citizens of each State shall be entitled to all the privil- "eges and immunities of citizens in the several States,"

and also that each State may prescribe the terms on which corporations created in other States, may be allowed to carry on their corporate business, especially when it is that of insurance, within that State.

In the present case, it appears that the State of Illinois, by general laws, (which will hereafter be cited at length), prescribed the terms on which foreign insurance companies might transact the business of insurance within the State; that the plaintiff in error was the agent of several foreign insurance companies, which complied with those terms from year to year, and received from the State Auditor a license or permission to transact business throughout the State, and while engaged in carrying on such business of insurance, under that authority, the Legislature passed laws authorizing divers cities in which the companies represented by the plaintiff in error were doing business, to levy and collect certain taxes, as they were called, at the rate of two per cent upon all premiums, which had been received by any such companies, during the half-year ending on the first days of January and July, preceding the date of the return which the companies were required to make of their receipts.

Among the cities which were authorized to collect such taxes, was the city of Chicago, and here follows a copy of that part of the City Charter which is supposed to confer upon that city the right in question:

"SEC. 5. All corporations, companies or associations, not incorporated under the laws of this State, engaged in said city in effecting "fire, marine or life insurance, shall pay to the City Treasurer the "sum of two dollars upon the hundred dollars, and at that rate upon "the amount of all premiums which, during the half year ending on "every first day of July and January, shall have been received, or "have been agreed to be paid, for any insurance effected, or agreed to

"be effected, in said city, by or with such corporations, companies or "associations respectively. Every person who shall act in said city as "agent or otherwise for or on behalf of any such corporation, com- "pany or association, shall, on or before the fifteenth day of July and "January in each year, render to the City Comptroller a full, true and "just account, verified by his oath, of all premiums which, during the "half year ending on every first day of July and January preceding "such report, shall have been received by him, or any other person "for him, or shall have been agreed to be paid, for or in behalf of any "such corporation, company or association, and shall specify in said "account the amounts received for fire, marine and life insurance "respectively. Said agents shall also pay over to the City Treasurer, "at the time of rendering the aforesaid account, the amount of rates "for which the company or companies represented by them are seve- "rally chargeable by virtue hereof. If such account be not rendered "on or before the day hereinbefore designated for that purpose, or if "the said rates shall remain unpaid after that day, it shall be unlawful "for any corporation, company or association so in default, to transact "any business of insurance in said city, until the said requisitions "shall have been fully complied with; but this provision shall not "relieve any company from the payment of any risk that may be taken "in violation hereof. Any person or persons violating any of the pro- "visions of this section, shall be subject to indictment, and upon con- "viction thereof in any Court of competent jurisdiction, shall be fined "in any sum not exceeding one thousand dollars, or imprisoned not "exceeding six months, or both, in the discretion of the Court. Said "rates may also be recovered of such corporation, company or associ- "ation, or its agent, by action in the name, and for the use, of said "city, as for money had and received for its use."

Private Laws of Iliinois, 1863, pp. 98 and 99.

Gary's Laws and Ordinances of Chicago, pp. 81 and 82.

And also section eight of chapter twelve of the same Charter, as follows:

"SEC. 8. One-eighth part of the amount of all fire insurance rates "which shall be annually paid into the City Treasury, as hereinbefore "provided, shall be reserved and set apart to create a fund for the "relief of distressed firemen who may become disabled in the service

"of the city, and shall be used solely for that purpose. Said money "shall be disbursed in such sums, and under such rules and regula- "tions, as the Common Council shall prescribe. The remaining seven- "eighths of the aforesaid revenue shall be retained by the city, and "allowed to accumulate, until a sufficient sum shall have been realized "to defray the expense of establishing a fire-alarm or fire-telegraph "system in said city, and shall be then used for that purpose. After "this purpose shall have been accomplished, this portion of the afore- "said revenue shall be applied to the purchase of fire engines and "other apparatus used for the extinguishment of fires."

Private Laws of Illinois, 1863, pp. 126 and 127.

Gary's Laws and Ordinances of Chicago, p. 121.

The insurance companies represented by the plaintiff in error, neglected to make the returns and refused to pay the taxes required by those sections of the charter, and on the 25th day of June, 1868, the City of Chicago brought an action of debt in the Superior Court of Chicago, to recover the taxes which it claimed were due under those provisions of the charter.

Record folio 9 to 30.

To that declaration Ducat pleaded, first: *nil debit*, and the following special plea, which presents the defence he made to the suit:

And for a further plea in this behalf, the said defendant says *actio non*, because he says that the said several insurance companies mentioned in the said plaintiff's declaration, and every one of them, are corporations created and established in the State of New York, under and by virtue of the laws of that State, and have their home offices, and principal place of business in the city of New York, in that State, where they, and each of them, are, by the laws of that State, liable to be taxed, and are taxed under the laws of that State for all municipal, county and State purposes, upon all property, and franchises of the said corporations; and are liable to be taxed, and are thus taxed upon their said property and franchises for all purposes for which taxes are lawfully levied under and by virtue of any laws of the United States;

and being so created and established under and by virtue of the laws of the State of New York, for the purpose of carrying on the business of insurance, the said insurance companies, and each one of them, duly appointed the defendant their agent, to carry on the business of insurance on their behalf in the City of Chicago, in the State of Illinois, on, to wit, the ninth day of November, A. D., 1865, which appointment the defendant accepted, and thereupon applied to the auditor of the State of Illinois for licenses to carry on said business of insurance at said City of Chicago, as required by two acts of the general assembly of the State of Illinois, one approved February 14, 1855, and the other amendatory of that act, approved January 22, 1857; the first act being entitled "An act to regulate the agencies of insurance companies not incorporated by the State of Illinois," which licenses were on the same day granted to this defendant by said auditor for one year from that date, and said licenses were renewed and extended to this defendant by said auditor from time to time; and on the 23d day of January, 1868, were again extended until the 31st day of January, 1869; which last several licenses are still in force, and are in substance as follows:

ORIGINAL.

Certificate to expire on the 31st day of January, 1869.

[5 cts. [5] internal revenue.]

AUDITOR'S OFFICE, STATE OF ILLINOIS,
SPRINGFIELD, 31st Jannary, 1868.

Whereas the Manhattan Insurance Company, ["Citizens' Fire," "Home," and "Howard Fire,"] located at New York, in the State of New York, has filed in this office a statement of the condition of its affairs, as required by "An act to regulate the agencies of insurance companies not incorporated by the State of Illinois," approved February 14, 1855, and an act amendatory thereto, approved January 22d, 1857; and whereas said company has furnished satisfactory evidence that it is possessed of the required amount of capital invested in stocks and mortgages, and has filed in this office a written instrument, signed by the president and secretary thereof, appointing Arthur C. Ducat, of Chicago, its agent for the transaction of the business of said company, and fully and unreservedly authorizing him to acknowledge service of process, for and on behalf of said company, consenting that service of process upon him, the said agent, shall be taken and held to

be as valid as if served upon the company, and waiving all claim of error by reason of such service.

Now, therefore, in pursuance of the provisions of the acts aforesaid, I, Orlin H. Miner, auditor of public accounts of the State of Illinois, do hereby certify that the said Arthur C. Ducat, of Chicago, is authorized as an agent for the said company, to transact the business of insurance in this State until the thirty-first day of January, in the year eighteen hundred and sixty-nine, so far as he may be legally empowered so to do by said company.

In testimony whereof I have hereunto subscribed my name and affixed the seal of my office, at Springfield, this 31st day of January, A. D., 1868.

(Signed) O. H. MINER,

[Auditor's Seal.] *Auditor, P. A.*

And so in substance were the first and all former licenses, and for which licenses this defendant paid all the fees required by said acts of the legislature of the State of Illinois, and under and by virtue of the same, and of the powers conferred upon him by said insurance companies as their agent, and also by virtue of the powers by law conferred upon said insurance companies by their respective charters granted by the laws of the State of New York, he carried on the business of insurance on behalf of said companies, at the City of Chicago, for the time stated in the plaintiff's declaration, as he lawfully might; and this defendant further states that, during all the time he has so conducted the business of insurance for said companies, that all the real and personal property of the said several insurance companies, within the State of Illinois, has been liable to be taxed, and has been taxed, as that of the citizens of the State of Illinois, and of incorporated companies created and established under and by virtue of the laws of that State, for State, county and municipal purposes.

And this defendant further says that, under and by virtue of the laws of that State, no other person or corporation, foreign or domestic, is required to pay, or does pay, any tax, license, or assessment like that laid upon foreign insurance companies, by virtue of the several acts of the legislature of Illinois referred to in the plaintiff's declaration, and by virtue of which acts the plaintiff demands of this defend-

ant the several sums claimed to be due from him to the plaintiff, and so this defendant says that the several acts of the legislature of Illinois, under and by force of which the plaintiff demands of him the several sums of moneys stated in its declaration in this cause, are unconstitutional, null, and void as against the several provisions of the Constitution of the State of Illinois, requiring taxation to be uniform respecting persons and property liable to taxation within that State, and also because said acts contravene that section of the Constitution of the United States which provides "that the citizens of each State shall be entitled to all the privileges and immunities of citizens of the several States," and because said laws are otherwise unconstitutional and void under the Constitution of this State and of the United States; and this he is ready to verify. Wherefore he prays judgment, &c.

Folio 31 to 37.

The city demurred to the plea, the Superior Court sustained the demurrer, and rendered judgment against Ducat for $3,756.39, and he appealed to the Supreme Court of Illinois, which affirmed the judgment of the Superior Court. Folio 39 to 47, and 65 to 66.

The opinion of the Supreme Court of Illinois will be found in full in the Record, folios 48 to 64, and is substantially like the opinion in Paul's case, as reported in 8 Wallace, 168, and squarely decides that corporations are not "citizens" within the meaning of that word, as used in the Constitution of the United States, thus bringing the case within the jurisdiction of this Court, and accordingly, Ducat having obtained the necessary certificate from the Supreme Court of Illinois, brought a writ of error from that court to this, neither he nor his counsel at that time knowing of the pendency of Paul's case in this court, but as this case was here at the time of the decision of that, it is earnestly desired by the parties in interest, that the court will pass upon the question presented in this record, and that is: whether or not, after the legislature has, by general laws, prescribed the terms on which foreign In-

surance Companies may do business in the State of Illinois, and the companies have in all particulars complied with those terms, they may be lawfully required to pay such taxes as those demanded by the City of Chicago in this case, or any other taxes, on their property, than such as are levied upon the citizens and corporations of the State of Illinois?

The laws referred to, and relied upon in the plea, are as follows: "An Act to regulate the Agencies of Insurance "Companies not incorporated by the State of Illinois," approved February 14, 1855, (Session Laws of 1855, page 46; Revised Statutes of Illinois, 1858, page 596); and so much of them as relates to appellant's defense, is as follows:

"SEC. 1. That it shall not be lawful for any agent or agents of any "insurance company, incorporated by any other State than the State "of Illinois, directly or indirectly, to take risks or transact any busi- "ness of insurance in this State without first producing a certificate "of authority from the Auditor of State; and before obtaining such "certificate such agent or agents shall furnish the said Auditor with "a statement, under the oath of the President or Secretary of the "company for which he or they may act, which statement shall show: "1st, the name and locality of the company; 2d, the amount of its "capital stock; 3d, the amount of capital stock paid up; 4th, the as- "sets of the company, including, 1, the amount of cash on hand and "in the hands of agents or other persons; 2, the real estate unencum- "bered; 3, the bonds owned by the company, and how they are se- "cured, with the rate of interest thereon; 4, debts of the company "secured by mortgage; 5, debts otherwise secured; 6, debts for pre- "miums; 7, all other securities; 5th, the amount of liabilities, due or "not due to banks or other creditors, by the company; 6th, losses ad- "justed and due; 7th, losses adjusted and not due; 8th, losses unad- "justed; 9th, losses in suspense, waiting for further proof; 10th, all "other claims against the company; 11th, the greatest amount insured "in any one risk; 12th, the greatest amount allowed by the rules of "the company to be insured in any one city, town or village; 13th,

" the greatest amount allowed to be insured in any one block ; 14th,
" the act of incorporation of such company. Which statement shall
" be filed in the office of said Auditor, together with a written instru-
" ment under the seal of the company, signed by the President and
" Secretary, authorizing such agent to acknowledge service of process
" for and in behalf of such company, consenting that service of pro-
" cess upon such agent shall be taken and held to be as valid as if
" served upon the company, according to the laws of this State or any
" other State, and waiving all claim of error by reason of such ser-
" vice. And no insurance company, or agent or agents of any insu-
" rance company, incorporated by any other State, shall transact any
" business of insurance in this State, unless such company is possessed
" of at least one hundred thousand dollars of actual capital, invested
" in stocks of at least par value, or in bonds or mortgages of real es-
" tate, with double the amount for which the same is mortgaged. And
" upon the filing of the aforesaid statement and instrument with the
" Auditor of State, and furnishing him with satisfactory evidence of
" such investment, as aforesaid, it shall be the duty of said Auditor to
" issue a certificate thereof, with authority to transact business of in-
" surance, to the agent or agents applying for the same."

" SEC. 2. It shall be unlawful for any agent or agents of any com-
" pany, incorporated by any foreign government, other than a State of
" this Union, to transact any business of insurance in this State with-
" out procuring a certificate of authority from the Auditor of State,
" such agent or agents having first filed, under oath, in the office of
" said Auditor, a statement, setting forth the charter or act of incor-
" poration of the company for which he or they may act, and the mat-
" ters required to be specified by the first section of this act, and the
" written authority therein mentioned, and furnished evidence to the
" satisfaction of the Auditor of State, that such company has invested
" in stocks of some one or more of the States of this Union, or of the
" United States, the amount of one hundred thousand dollars, and
" that such stocks are held by citizens of the United States. And the
" said agent or agents of such company, filing said statement and fur-
" nishing evidences of investment, as aforesaid, shall be entitled to a
" certificate of authority in like manner as is provided for in the first
" section of this act. * * * * * *

" SEC. 8. Any insurance company complying with the requirements
" of this act and receiving the certificate from the Auditor, or for any

" of its agents, shall not be required to furnish but the single state-
" ment and evidence required hereby, which being filed with the Au-
" ditor of State, shall be deemed a sufficient compliance for its free
" transaction of business in this State."

And another act, which is entitled, " An Act to amend " an Act to regulate the Agency of Insurance Companies " not incorporated by the State of Illinois," approved January 22, 1857 (Session Laws of 1857, page 53; Revised Statutes of Illinois, 1858, page 598,) as follows:

" SEC. 1. That insurance companies shall be required to file a copy
" of the statement, required in the first section of the foregoing reci-
" ted act, to be filed in the Auditor's office, in the office of the County
" Clerk of each county in which they may have established or may
" hereafter establish an agency; but a copy of the statement filed for
" a renewal of certificate, as required by the fourth section of said
" act, shall not be required to be filed in the office of the County
" Clerk"

" SEC. 2. The Auditor may file statements and evidence at any
" time they may be presented for that purpose, and grant certificates
" of authority to the agent or agents of the companies filing such
" statement; but no certificate shall authorize the agent or agents to
" take risks, or transact any business of insurance, from and after the
" thirty-first day of January next ensuing the date of such certificates.
" Any person or persons who shall transact any business of insu-
" rance as the agent of any company required by this act, or the act
" to which it is an amendment, to obtain authority from the Auditor
" to transact business in the State, without first obtaining a certificate
" from the Auditor authorizing him or them to transact such business,
" or who shall transact such business after the expiration of the time
" specified in such certificate for doing business under it, and before
" he shall have received a renewal thereof, shall be liable to all the
" penalties imposed in the act to which this is an amendment, for a vi-
" olation of the provisions of said act."

" SEC. 3. Insurance companies shall pay to the Auditor five dol-
" lars for examining and filing the statement and evidence, and one
" dollar for each certificate of authority issued to agents."

The laws require foreign Insurance Companies to make full and truthful disclosures of their financial condition, and to agree that their agents in the State shall receive service of process, in such a manner as to become binding upon the companies, the same as if served upon them at their home offices; and to do many other acts enumerated in the statutes, and to "pay the Auditor five dollars for "examining and filing the statements and evidence, and "one dollar for each certificate of authority issued to "agents."

The certificate issued by the Auditor in this, and similar cases, is general in its terms, and authorizes the agent applying for it "to transact the business of insurance in this "State" until the thirty-first day of January then next ensuing, and so on from year to year, as it may be asked for by the companies and granted by the Auditor.

This is, in form and substance, a license to foreign Insurance Companies, to transact their business in the State of Illinois, as domestic companies may do, after the former have complied with the requirements of the laws.

The disclosures and statements made to the Auditor, the stipulations as to service of process, and the fee paid that officer for each license, must be regarded as a good consideration paid by the companies for permission to do business within the State, and while these laws are in force, and obeyed by foreign companies, it is respectfully insisted that no taxes should be levied upon their business and property, which are not levied upon domestic companies, and the other citizens of the State.

By taking out the licenses issued by the auditor, the companies become, as it were, naturalized, and legally domiciled in the State.

It is not denied that the State may exclude them altogether, at least that is the decision of this court, in *Paul's case*, but having enacted general laws permitting, if not inviting, foreign companies, to come here and do business under them, the privilege thus granted ought not to be diminished or impaired by unequal and discriminating taxes, levied by the cities in which the agencies are established.

There are but five or six large cities in Illinois, in which foreign companies can do much business: Chicago, Bloomington, Quincy, Peoria and Springfield; and most if not all those cities, have been authorized by the legislature to levy taxes upon the gross receipts of the companies doing business within their limits.

The collection of this tax in the city of Chicago, was resisted in two cases, reported in 13 Ill., 554, *The People* v. *Thurber*; and 21 Ill., 511, *Firemen's Benevolent Association* v. *Lounsbury*.

The first case was decided in 1852, and the decision placed on the ground that "the law itself was the license," p. 556, and the tax, the price paid for the privilege of doing business, and further that the business of insurance was not commerce in the sense in which that word is used in the constitution of the United States.

The case in 21 Ill., 571, was decided in 1859, and arose under the same law as *Thurber's case*, and followed the decision in that case in all essential particulars, and the further point was made that the proceeds of the tax were to be devoted to the maintainance of a private charity, but the court held that made no difference, and affirmed its first decision upon the main question. In holding that it is proper to levy taxes for the benefit of pri-

vate charities, the Supreme Court of Illinois came to a different conclusion from that of the Supreme Court of Pennsylvania, in a precisely similar case. The *Philadelphia Association, &c.*, v. *Wood*, 39, Penn., St. 73.

The first general law on this subject was enacted by the legislature in 1855, and amended in 1857, (see them cited in full, above), and the charter of the city of Chicago, nnder which the present suit arose, was passed in 1863, (private laws, 98–99), and is cited at length in the former part of this brief.

On the 9th of November, 1865, Ducat applied to the Auditor for licenses to act as agent for certain foreign Insurance Companies, under the laws of 1855 and 1857; the licenses were issued to him and renewed from year to year until the January next preceding the commencement of this suit, when they were renewed for one year longer, and were in force at the time this suit was brought, in which the city claims to recover premiums for the whole period covered by the licenses issued to Ducat by the Auditor.

The sections of the charter of the City of Chicago, which provide for the collection of this tax, are a part of the revenue or taxation system of the city, and the tax cannot be regarded as the price paid for a license to do business, because the companies, or their agent, Ducat, had already obtained that from the Auditor, so it is simply a question whether or not the State may tax, unequally, the business and property of persons and corporations, lawfully and by its own express permission, doing business within its limits, and base that inequality of taxation upon the sole ground that the corporations upon whose property it is laid, are created by other States, which is in effect

taxing the property of the citizens of other States, at a higher rate than that of its own citizens.

It is believed to be an axiom of constitutional law, that no State can lawfully impose heavier *taxes* upon property within its limits, belonging to the citizens of other States, than are laid upon the property of its own citizens.

We need not discuss the reasons or seek for the foundations of the rule, because the question has been often before this Court and it must be regarded as settled beyond all controversy.

The leading cases on this subject are *Brown* v. *Maryland*, 12 Wheaton, 445, *Woodruff* v. *Parham*, 8 Wallace, 123, and *Hinson* v. *Lott*, 8 Wallace, 148.

The taxes questioned in the last two cases, were sustained upon the sole ground that they were uniform as respected the property within the State of Alabama, whether it belonged to citizens of that or other States.

The last sentence of the opinion in the case of *Hinson* v. *Lott* is as follows:

"As the effect of the act is such as we have described, "and it institutes no legislation which discriminates "against the products of sister States, but merely subjects "them to the same rate of taxation which similar articles "pay that are manufactured within the State, we do not "see in it an attempt to regulate commerce, but an "appropriate and legitimate exercise of the taxing power "of the States."

This seems to express the gist of the opinions in those two cases, and is not intended as an unfair quotation not consistent with the whole tenor of the decision, and the only question left in the present case, is whether or not the tax or assessment demanded by the City of Chicago,

of the plaintiff in error, is or not, a tax, properly speaking.

It cannot be called a license fee, paid for the privilege of coming into the State and doing business, because the Auditor issued the license under the general law, and pursuant to that license, the companies commenced business in Chicago, and received the premiums, two per cent. of which are demanded by the city of Chicago as a tax levied upon property, and that, too, of a most oppressive character, for a tax on gross receipts is a tax upon that in which the company may not have any interest after paying the losses sustained upon the risks for which the premiums were paid, for there may be nothing left to it after paying those losses.

It is true that the amount of its tax or its fairness does not in this case affect the question of the power to levy it; but if it is not a license fee, then it is a tax levied according to an arbitrary rule, and its unjust and unequal character is a proper subject of consideration, in passing upon the validity of the law imposing it.

In *Paul's case*, it appears that he refused to comply with all the terms required by the law of Virginia, of foreign Insurance Companies, upon establishing agencies for the transaction of insurance business in that State, and, therefore, did not have a license for carrying on the business; for this violation of the law he was prosecuted by the State to recover the penalty imposed upon persons guilty of its violation; and this Court decided that the law was valid, and he was liable to the penalty, but it did not decide, that if he had obtained the license, the property of the companies represented by him could be *taxed* by the State of Virginia, at a greater rate than the like property of the citi-

zens of that State, merely because it belonged to foreign Insurance Companies; *that* question was not presented by the facts of the case.

In the present case the facts are widely different, for the Insurance Companies complied with every requirement of the law, and received licenses to do business throughout the State, and when they had thus become, as it were, legally domiciled within the State, and acquired property within its limits liable to taxation, the State attempted to authorize the city of Chicago, and also other cities, in which the licensed agencies were established, to levy taxes upon that property, which were not imposed upon the property of the citizens of Illinois, merely because it belonged to corporations created in other States.

In the case of *Runyan* v. *The Lessee of Coster et al*, 14 Peters, 122, which involved the question of the power of a New York corporation to acquire and hold lands in the State of Pennsylvania, this Court said: "The corporation "must show that the law of its creation gave it authority "to make such contracts; yet, as in the case of a natural "person, it is not necessary that it should actually exist in "the sovereignty in which the contract is made. It is "sufficient that its existence as an artificial person in the "State of its creation, is acknowledged and recognized by "the state or nation where the dealing takes place; and "that it is permitted by the laws of that place to exercise "there the powers with which it is endowed. Every "power, however, which a corporation exercises in an- "other State depends for its validity upon the laws of the "sovereignty in which it is exercised; and a corporation "can make no valid contract without the sanction, express "or implied, of such sovereignty, unless a case should be

" presented in which the right claimed by the corporation " should appear to be secured by the Constitution of the " United States."

In the present case, the State of Illinois authorized the companies, represented by the plaintiff in error, to come within the State, and carry on their business upon certain terms, with which they complied. Now, suppose that while those laws were in force, and while, from year to year, foreign Insurance Companies asked for and obtained the licenses authorized by the laws, the companies had acquired real estate, or tangible personal property, such as is usually required and used by such companies in the transaction of their business, and the State had authorized the cities in which the agencies were established and where the property was situated, to tax it more heavily than they were authorized to tax the property of citizens of that State which was subject to taxation, could such laws and such taxes be held valid ?

They ought not to be, because the *taxes* mu t be uniform, which are imposed by State authority upon the property within the limits of the State, or at least there must be no discrimination against property belonging to citizens of other States, merely on the ground that it belongs to the citizens of other States.

The authorities cited above from 12 Wheaton, 445, and 8 Wallace 123 and 148, seem decisive of that point.

Then, is the tax in question to be regarded as a part of the license, or price paid for the privilege of doing business within the State, for it is the latter which issues the license, not the city of Chicago ?

The proposition may be stated thus : The State authorizes the Insurance Companies, which comply with the re-

quirements of the general laws on this subject, to establish agencies and do business within the State of Illinois, upon the further condition, that they pay all such taxes upon their property within the State as may be, from time to time, imposed, even if they are greater in amount than those levied upon the property of the citizens of the State; or more briefly, foreign Insurance Companies may do business within the State if they will comply with the general laws on this subject, *and* submit to unequal taxation of their property situated within the State.

This seems the strongest way of stating the adverse view of the matter, and it is answered by saying that the State has distinguished between the license or authority granted to foreign Insurance Companies to do business within its limits, and the taxes levied upon their property; and when it has granted the former it has no power to tax unequally the property which the companies have acquired and hold within the State. This Court has decided in *Paul's case* that the States have the right to require licenses of foreign Insurance Companies before they do business in other States than those in which they were created; and it has also decided in other cases, that the States have no power to levy greater taxes upon the property of the citizens of other States, situate within their limits, than are imposed upon the property of its own citizens.

The right to require licenses of foreign Insurance Com. panies is founded upon or derived from the police power of the States, and may be exercised whenever and in such manner as the legislature may deem best for the general good of the State, but the general power of taxation, possessed by the several States, is subject to the constitutional

restriction that the property lawfully acquired in one State by the citizens of another, shall not be taxed at a greater rate than is imposed upon the property of its own citizens,

In this case, it appears that the State of Illinois has established a license system in regard to foreign Insurance Companies, and having done that, and from year to year, compelled obedience to that system, at the same time it requires the companies that comply with it, to submit to an onerous and unequal system of taxation, in which the discrimination is based upon the citizenship of the owner, and is against the citizens of other States.

Neither in form, substance or effect, is the tax in question a license for the privilege of doing business. It was first enacted in 1845, (see Revised Laws of 1845, chapter 64, sections 22, 23 ; 13 Illinois, 554,) and was changed in 1852, by an an act giving to an incorporated charitable institution the proceeds of the tax, (21 Ills. 511,) but in 1855 and 1857, the general laws, cited *in extenso* in the former part of this brief, were enacted, and in 1863, the charter of the city of Chicago was revised, and this tax was included in the revenue chapter of the charter, and required to be paid into the city treasury and appropriated to municipal purposes. (See the sections of the charter cited at length in the former part of this brief.)

The laws of 1855–7, have been all this time in full force, and obedience to their requirements strictly required, and thus we have a license system, and one of taxation, independent of each other, wholly applicable to foreign Insurance Companies.

This Court has decided in *Paul's case* that the former is valid ; it has also decided that unequal taxation discriminating against the citizens of other States is invalid, and as

this is a tax, and not a license fee, or price paid for a license, it cannot be supported either as a license or a tax.

The license is required on grounds of public policy, to protect the community against loss from irresponsible Insurance Companies, but the tax has been levied upon their property like other taxes.

The distinction between them seems plain, and if it is allowed, will do the State no harm, and secure that equality in our system of taxation, which ought always to be preserved.

This is one of a large number of similar cases awaiting the decision of the question discussed in this brief. Both parties are anxious to have it considered and decided upon its merits, and so far as this side of the case is concerned, the Court has had its attention solely directed to what are believed to be facts and questions wholly distinct from those which were presented in *Paul's case*, and, in the belief that this suit was brought to recover an unequal and invalid tax upon property, and not a license fee, either in part or whole, paid for the privilege of doing business within the State of Illinois, it is respectfully submitted that the judgment of the Supreme Court of Illinois was wrong, and ought to be reversed.

SAM'L W. FULLER,

Counsel for Plaintiff in Error.

CHICAGO, Nov. 8, 1870.

Supreme Court of the United States

DECEMBER TERM, 1870.

ARTHUR C. DUCAT, *Plaintiff in error,*
vs.
THE CITY OF CHICAGO, *Defendent in error.*

BRIEF OF DEFENDENT IN ERROR.

STATEMENT OF CASE.

This was an action of debt against plaintiff in error as the agent of certain Insurance companies, incorporated under the laws of the State of New York.

The action was brought under the provisions of the city charter, which are substantially as follows :

All corporations, not incorporated under the laws of this State, engaged in effecting fire or marine insurance in the City, shall pay to the City Treasurer, the sum of two dollars upon the hundred dollars upon the amount of all premiums received or agreed to be paid for any insurance, or agreed to be effected in said City, by or with, such corporations respectively.

All agents of such corporations, shall, on or before the 15th

day of July and January, in each year, render a true and perfect account, under oath, of all premiums, which, during the half year ending on every first day of July and January preceding, to the City Comptroller, and shall at the same time pay over to the City Treasurer, the two dollars on the hundred upon the premiums received by him.

If such rate is not paid as before required it shall be *unlawful* for such corporation to transact any business of insurance within said City, &c.

Any person or persons, violating any of the said provisions, shall be liable to indictment.

Said rates may be recovered of the corporation *or its agent* in the name of the City, as for money had and received for its use.

The defendant, Ducat, pleaded the general issue, and a special plea.

The special plea sets up a license from the Auditor of the State of Illinois, granted under an act of the General Assembly, February 14, 1855, and the act amendatory thereof, January 22, 1857, (found in Revised Statutes of Illinois, pages 596 and 598,) that the property of the companies represented by Ducat, has been liable to be taxed, and has been taxed the same as the property of domestic corporations, and of citizens of the State of Illinois; that no other than foreign fire insurance companies are required to pay any tax, license or assessment like that demanded in this case; that the provisions of the charter, under which the suit is brought, are unconstitutional, null and void, as against the provisions of the State Constitution, requiring taxa-

tion to be uniform respecting persons and property liable to taxation; and because said acts are in contravention of that section of the constitution of the United States, which provides "that the citizens of each state shall be entitled to all the privileges and immunities of citizens of the several states;" and are otherwise void and unconstitutional under the constitution of the State of Illinois and of the United States.

A demurrer was filed to this plea, which was sustained by the court, and judgment for $3,756.39, rendered against Ducat. He appealed to the Supreme Court of Illinois, which affirmed the judgment of the Superior Court of Chicago.

ARGUMENT.

The action was brought for the purpose of testing the same questions which were presented to this court in the case of *Paul* vs. *The State of Virginia*, 8 Wall., 168, and the decision of the Supreme Court of Illinois in this case, is admitted by appellant's counsel to be "substantially like the opinion in *Paul's* case," in 8 Wallace; but it is contended that the facts appearing in this case, take it out of "the scope and effect" of that decision.

In *Paul's* case, the law of Virginia required foreign insurance companies to take out a license to carry on business, and to deposit bonds of a specified character, according to the extent of the capital employed. *Paul*, an agent of a foreign company, applied for a license, offering to pay the license fee, but refused to deposit the bonds. The license was refused; he transacted business without the license, and was indicted under the state statute, and convicted.

In Ducat's case, now before this Court, the law of the State

of Illinois required a similar license to be taken out, and the filing of a statement as to the condition of the company. This statement was filed and a license obtained under that law, authorizing Ducat, as agent for certain companies, to do business within the State.

At the time Ducat obtained this license, there was another act of the General Assembly, (amending the charter of the City of Chicago,) in existence. This latter act was *passed subsequent to the passage of the act under which the license was obtained*, and required that foreign fire insurance, engaged in said City of Chicago, in effecting fire insurance, should pay to the city treasurer the sum of two dollars upon every hundred dollars of all premiums received, or agreed to be paid, for any insurance effected in that city. This act made it unlawful to transact the business in the city, unless this two dollars upon a hundred of the receipts was paid, as required by the act. Ducat refused to pay to the city treasurer any amount whatever, or to comply with this latter act. The city brought suit to recover this two dollars upon the hundred of the receipts of companies represented by Ducat.

These are the material facts as shown by the respective records in each case, and it is respectfully insisted that the facts in Ducat's case do not take it out of "the scope and effect" of the principles laid down in Paul's case. That the case of *Paul* vs. *Virginia*, as to the principles involved, is precisely similar to this case.

The point involved in each case is whether a State Legislature has the power to make a discrimination between foreign and domestic insurance companies, as to the conditions and terms upon which they may respectively do business within the State.

If the foreign insurance companies are, for the object and purposes for which they were created, citizens of the State which created them, and as such entitled to all the benefits of the provision of the United States Constitution, cited "that the citizens of each State shall be entitled to all the privileges and immunities of citizens of the several States," then the State Legislature has no power to make such discrimination.

This court decided this point in *Paul's* case, and held that corporations are not citizens within the meaning of the clause above quoted; and not only decided that the State Legislature had the power to so discriminate, but that "corporations created in one State had not even an absolute right of recognition in other States, *but depend for that and for the enforcement of their contracts upon the assent of those States, which may be given accordingly on such terms as they—the other States—please.*"

The counsel for plaintiff in error endeavors to avoid the above point decided in Paul's case, by the proposition that "by taking out licenses issued by the auditor, the companies become, as it were, naturalized and legally domiciled in the State." In other words, the company becomes a *quasi* citizen; but the Constitution of the United States does not recognize the corporations as *quasi* citizens, or the rights of *quasi* citizens.

The State of Illinois has, through its Legislature, prescribed the *terms* upon which the State will give recognition to foreign corporation; upon which it will permit them to do business in the State and upon which it will recognize their "special privileges" and enforce contracts made by them. Their terms are that they shall file the sworn statement, and obtain the certificate (or license) from the Auditor of State, in accordance with the Acts of 1855 and 1857, *and that*

they shall also render the City Comptroller of the City of Chicago —if they transact business in that city—the account required of them, and pay two dollars upon the hundred of their gross receipts—(the proceeds of said contracts)—to the City Treasurer, as provided in the Act of 1863.

If these corporations are merely creations of the local law which created them; if they are not citizens; if they have no "privileges or immunities" which other States are bound to recognize; and if the other States may prohibit them doing business—their very existence—within the limits of such other States respectively, (all of which has been decided in *Paul's* case)—; then it necessarily follows, that the State of Illinois has the right to provide—as in the Acts of 1855, 1857, and 1863, that any foreign corporations, as a condition to its doing business in the City of Chicago, shall not only take out a State license, but shall also pay two dollars out of every hundred of their premiums received from business transacted in the city, to the City States Treasurer.

No right guaranteed by the Constitution of the United States, no provision of that Constitution, or of any law of the United is in any way violated.

The Counsel for Plaintiff in Error argues, that having received the certificate (or license) from the Auditor, the foreign corporation thereby acquires the right to transact its business anywhere in the State, on an equality with local or domestic corporations.

The difficulty in the proposition is the assumption, that the only terms exacted of the foreign Insurance Companies, the only conditions to their recognition, are the filing of the statement with the Auditor and the obtaining the certificate or license from him.

If the acts of 1855, 1857 and the act of 1863 are not inconsistent, and can all stand together, then there is a very important limitation or condition which the learned counsel has omitted; which is, that if the foreign company desires to do business *in the City of Chicago*, it must in addition to filing the statement with the Auditor and obtaining the license from him, pay to the City Treasurer two dollars on every hundred of its gross receipts, and render its account to the City Comptroller as required by the act of 1863. The *terms* which the General Assembly has pleased to prescribe, are, compliance with all three of the acts 1855, 1857 and (the City Charter) 1863.

If the acts 1855, 1857 and that of 1863 are inconsistent, then as the City Charter (the act of 1863,) is a special or local act, it must be held to be paramount within the City of Chicago; upon the principle that were there is a general and a special or local statute on the same subject; the special or local, within the locality of its operation (if the two are clearly repugnant,) shall control and be held to be the paramount law.

Bennett v. *The People*, 30 Ills., 394.
Titcomb v. *The Union F. M. Ins. Co.*, 8 Mass., 326.
The President and Trustees v. *County of La Salle*, 12 Ill., 339.
City of Janesville v. *Markoe*, 18 Wis., 350.

These acts however are not so repugnant, that they can not stand together.

Town of Ottawa v. *County of La Salle*, 12 Ill., 340.
McFarland v. *State Bank*, 4 Ark., 410.

It is sought to discriminate this case from *Paul's* case, upon the position, that the two dollars upon every hundred of the premiums received, is a tax, and counsel contends "that no State

can lawfully impose heavier taxes upon property of citizens of other States than are laid upon the property of its own citizens," and cites in support thereof—

Brown vs. *Maryland*, 12 Wheaton, 445.

That case arose out of the statute of Maryland, taxing, by way of discrimination, importers who sold by wholesale, foreign goods. The law was held invalid: 1st. On the clause of the United States constitution which forbids a State to levy imposts or duties on imports; and 2d. That which confers on Congress power to regulate commerce. The counsel also cites

Woodruff vs. *Parham*, 8 Wall., 123.
Hinson vs. *Lott*, do. 148.

The first arose out of a law taxing sales at auction, of the products of other States, imported and sold in unbroken packages; and the other arose out of a law requiring all dealers to pay a tax of fifty cents a gallon on all liquors introduced into the State, before offering them for sale. The same tax was levied upon home products in each case.

The clauses of the constitution which it was contended were violated by these laws, were, 1st. Congress shall have power to regulate commerce, &c. 2d. No State shall levy any imposts or duties on imports or exports. 3d. The citizens of each State shall be entitled to all the immunities and privileges of citizens of the several States.

The decisions of the Supreme Court of Alabama, sustaining both of the said State laws were affirmed by this Court.

The case of *Paul* v. *Virginia*, so far as this case is concerned, decides, that foreign corporations, are not citizens within the

meaning of the clause of the Constitution above quoted, and that this law of the State of Illinois is not an attempt to regulate commerce. It is respectfully submitted that this law does not operate as "a levy of any imposts or duties on imports or exports."

The decisions cited by Counsel for Plaintiff in Error, it is respectfully submitted, are not applicable to the questions involved in this case. This Court has never held that a State can not impose a heavier *burden* upon foreign corporations, for the privilege of exercising their franchises within the State, than it imposes upon domestic corporations for the exercise of similar franchises or privileges.

This is the question involved in this case. The question as to the power to levy heavier *taxes* upon non-resident's property, than may be levied upon a resident's property, does not arise.

This two dollars upon every hundred of the premiums received, is not, in the act itself, denominated a tax; and the Supreme Court of the State of Illinois has, not only in this case, but twice before, in passing upon this law, decided that "it is not a tax upon property, but that it is a burden imposed upon the agent for the right of exercising a franchise or privilege, and which the Legislature would have the right to withold or inhibit altogether; and the amount of premiums charged is merely a mode of computing the amount to be paid for the exercise of the privilege."

The People vs. *Thurber*, 13 Ill. 554.
Fireman's Benefit Ass'n vs. *Lounsbury*, 21 Ill. 511.

In the Thurber case, the point raised by the plea, that the charter act of 1863, is in violation of that provision of the State

Constitution, which requires that all taxation shall be by valuation, and uniform, was passed upon by the Supreme Court of Illinois, and it was held that it was not in violation of that provision of the Constitution.

That this requirement of the law, to pay "the two dollars upon every hundred" is not a tax upon the agent, his occupation or the business of the Company, but is a license fee required for the permission or license to transact the business of the foreign corporation in the city, has also been held by other courts, than, that of the State of Illinois.

Fire Department of Milwaukee v. *Helfensteine*, 16 Wis. 139–40.
People v. *Naglee*, 1 Cal., 242.

The Court in the latter case cited:

Milne v. *New York*, 11 Peters, 132.
And the license cases, 5 How., 504.
New York and Boston Passenger Case, 7, How., 283.

Inasmuch as the statutes of the State of Illinois, in question, do not impair the obligation of any contract, and are not in violation of any provision of the constitution of the United States, or of any law of the United States and as the Supreme Court of the State of Illinois has placed a construction upon those statutes, the construction of the state court will be followed.

The decision of a state court, as to the conformity of a local law to the State Constitution, will be followed by the United States courts.

Nesmith v. *Sheldon*, 4 McLean, 375.

Dubois v. *McLean*, 4, McLean, 488.
Gelpcke v. *Dubuque*, 1 Wall., 175.
Bank of Hamilton v. *Dudley*, 2 Pet., 492.

Respectfully submitted,

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